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Padmavati to S... Durga **- Who Censors the censor board in India?**

Authored By- Shervin Mk

ABSTRACT

Article 19(1)(a) of the Constitution guarantees freedom of speech and expression, which includes artistic liberties within its scope. On the one hand, there are heated debates and discussions about the censor board's overreach in restricting filmmakers' freedom, and on the other, there are fringe demands to ban movies even before they reach the censor table. The paper examines the story of two ladies, Padmavati and S... Durga, against the backdrop of film censorship. Padmavati, the Indian epic period drama directed by Sanjay Leela Bansali, has sparked debate. The film's release date, originally set for December 1, 2017, was postponed indefinitely in response to threats of violence based on the film's depiction of factual inaccuracies, casting the Rajput queen Padmavati in a negative light. Some sects insist on being able to evaluate the film before it is released. But is it fair to subject Bansali's film to the evaluation and approval of certain sects unqualified in art and cinema, and then to the denial of a clearance certificate from the Censor Board? S... Durga may not be as well-known as Padmavati, but the fate is similar. The original title of the films was "Sexy Durga," which is, of course, blasphemous in India, as Mr. M.F Hussain can attest. The censor board approved a provisional certificate on the condition that the name be changed to S... Durga. On second thought, and most likely due to extraneous interferences, the Censor Board revoked the provisional certificate. The contrasting positions taken by political parties and intellectuals in the recent Padmavati and S... Durga controversy have reopened the debate over cinema censorship in India and the constitutionally guaranteed freedom of expression to the people. Is the censor board restricting their freedom too much? True, India is a vast country with hundreds of cultures and traditions, and even a small spark can ignite a large fire. It is natural for there to be differences of opinion on the issues at hand. Through numerous judgements, the Supreme Court has attempted to find an answer to this question.

The current paper makes an attempt to get to the bottom of the issue and reach a conclusion.

INTRODUCTION

The greatest threat to today's filmmakers is not making a wonderful picture, but making a film that meets the censorship board's requirements. When a director submits his film for certification, he crosses his fingers that it will be approved by the censorship board. In our country, not a single year goes by without at least one movie being banned or a large number of films being filtered. If it's "lipstick under my burkha" this year, it'll be "udta Punjab" the following year. The list is still increasing. Censorship, it is true, has a significant impact on avoiding hate speech and conflicts in society. It monitors the films to guarantee that the country's sovereignty and integrity are not jeopardised. This research work attempts to determine where and under what situations censorship is required. The article also discusses where the line should be drawn in terms of infringing on artistic freedom in films.

Article 19(1) guarantees freedom of speech and expression to all citizens of the country as a basic right. It enables an individual to achieve self-actualization and serves as a democratic foundation, allowing everyone to express their opinions and ideas. Expression through media and literary works is also included in the right to free speech and expression. A director or writer is free to express his artistic ideas and beliefs in whichever way he sees fit, but this freedom is limited by article 19(2). In *Kanhaiya Kumar v State of Delhi*¹, the defendant was held guilty for chanting anti-national slogans, which harmed the country's integrity and so violated Article 19(2). This is a perfect example of the constraints that might be placed on a person's freedom of speech and expression. Taking this into consideration, the censorship board is presumed to have the authority to impose such restrictions, but the scope of such restrictions has not been clearly established, and this uncertainty leads to miscarriage of law and justice. This study attempts to analyse specific aspects of the Cinematograph Act of 1952 that deal with the power of the censor board in imposing limits and the involvement of the central government in this process.

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS **The Cinematographic Act Of 1952**

The act was enacted to ensure that films meet the legal requirements. The provisions of the act establish a regulatory agency known as the central board of film certification, which assigns different certificates to movies before they are shown in public as a warning to the audience about the content of the film. The board's functions include:

- Restricting the audience of a movie to adults or some type of individuals based on the characteristics of a movie before giving a certificate
- Directing alterations and removals in the movie before granting a certificate
- Preventing the exhibition of a movie completely

Sections 5B and 6 of the legislation give the federal government sufficient authority to intervene in censorship board proceedings and issue directives on censorship and movie certification. In accordance with Section 6, the Central Government may, by announcement in the Official Gazette, require a film to be uncertified and not permitted to be exhibited in the entire country or any portion of the country, even though it received a clean "U" certificate from the censorship board. The intervention of the central government can be arbitrary at times and result in a miscarriage of justice; one example is the 1975 political drama film 'Aandhi.' Suchitra Sen played the lead protagonist in the female-oriented film. The main character of the film bore striking resemblances

¹1 *kanhaiyakumar v state of Delhi*; W.P.(CRL).No. 558 of 2016 , Crl.M.A. Nos. 3237 of 2016 & 3262 of 2016

to Indira Gandhi, including her dressing style, silver streak of hair, and walking style, all of which were reminiscent of the then-prime minister Indira Gandhi. However, when Indira Gandhi lost the elections in 1977, the ban on the film was lifted, and it was even telecast on Dhoordarshan. This is a fantastic example of how the involvement of the central government can pose an imminent threat to miscarriage of justice and restricting freedom of speech and expression based on the ruling party's whims and fancies. They attempt to polish what the audience sees based on their interests and wants. The same may be said for the censorship powers of censorship boards, which frequently become arbitrary and unjustified.

For the first time in *Abbas vs Union of India*², the court was given the opportunity to examine into issues of free speech and expression beyond the framework of newspapers and magazines. The petitioner, an award-winning film producer, was denied permission to broadcast his documentary "The Tale of Four Cities" because it included shots from Bombay's red-light district. If the narrative was to be certified for screening, the board requested that some scenes be changed. He declined and filed a complaint with the Supreme Court, alleging that the board was infringing on his artistic freedom. Hidayatullah, C.J., ruled that banning movies that include pre-censorship was legal. However, he said that the Board's unreasonable restrictions on freedom of speech and expression should not be fleshed out. The award-winning *Lipstick Under My Burkha*, which explores the issues of women's sexuality and sexual desires, is the most recent victim of our country's strict film censorship regulations. The Central Board of Picture Certification (CBFC) denied the film a certificate for presentation, citing a violation of the criteria established by the central government under the authority conferred by Section 5B of the Cinematographic Act of 1952. The guidelines allegedly breached were 1(a), 2(vii), 2(ix), 2(x), 2(xi), 2(xii), and 3.

Similarly to a few other cases, the CBFC completely rejected many points of reference established by the courts this time when refusing to issue a certificate to *Lipstick Under My Burkha*. The CBFC cited guideline number 2(viii), which specifies that "vulgarity, obscenity, and depravity insulting human sensibilities shall not be exhibited." It also cited guidelines 2(ix) and 2(x), which aim to prevent derogatory depictions of women. Indian courts have frequently held that sex and obscenity are not always synonymous, and that categorising sex as essentially immoral, obscene, or unattractive is incorrect. Furthermore, courts have developed a "assessing the work as a whole criterion" " under which any opinion about the film should be centred on the major subject of the film and surveyed as a whole, not only on a handful of isolated sentences. In reality, in *Bobby Art International v. Om Pal Singh Hoon*³, the court applied these two standards and authorised frontal nudity sequences in *Bandit Queen*. Despite the fact that the movie *lipstick* is expected to contain sexually triggering scenes and nudity, it should be allowed since, first and foremost, sex and vulgarity are not synonymous. The presence of sexual scenes in the film does not imply that it is offensive, because the overall goal of the film is not to promote offensiveness. Arbitrating the film as a whole reveals that it spreads the issues of women's rights and sexuality. How can a film that won the Oxfam Best Film on Gender Equality Award be disrespectful to women?

If the CBFC's concern was that the film contains sexually explicit scenes, it might have given the film a 'A' rating and restricted it to adults. This is the primary reason why a certification system was envisioned in the first place. Such occurrences provide us with an opportunity to address the long-delayed reorganisation of cinema censorship rules. The censor board requires increased involvement from the film business and minimal government authority. As previously stated, clause 2 gives the central government the ability to issue "such bearings as it thinks proper setting out the standards which will lead the authority equipped to provide certificates under this Act in allowing films for open display." A cursory examination of the criteria reveals why there are such harsh prohibitions or restriction of films on a consistent basis.

² *Abbas vs union of India*, on 24 september, 1970

³ *Bobby Art International, Etc vs Om Pal Singh Hoon & Ors* on 1 May, 1996

The simple answer is that they are imprecise and highly flexible, which breaks the firm foundation it should have and causes it to bend for the needs of different people.

The following are the guidelines as they are available on the CBFC website:

⁴Rule 2(i): Anti-social activities, such as viciousness, are not applauded or legitimised.

Rule 2(iv): Ineffective or unnecessary scenes of brutality... and scenarios that may have the effect of desensitising or dehumanising humans are avoided.

Rule 2(xiii): No visuals or statements that advance the public, are obstructionist, antagonistic to reasoning, or are anti-national in nature are exhibited.

Similarly to how it is not indicated when an act becomes futile or avoidable, terms such as anti-social and anti-national attitude are not precisely defined and hence serve as recommendations.

This empowers the central board and the central government to act arbitrarily based on their own interests and viewpoints. This, combined with the political nature of appointments ranging from the very top chairman of the CBFC to members of regional committees, means that the entire system of cinema censorship or certification is heavily influenced by the ruling party's wishes and interests.

What constitutes 'anti-national' in the sense of the politically influenced certifying authority will be subject to what constitutes 'anti-national' in the sense of the politically influenced certifying authority. A liberal chairman might not have prohibited the present film as strictly as a rigorous chairman would. Because there are no objective standards, reading the rules is dependent on the government's stories.

Sections 3(1) and 5(1) of the Cinematographic Act state that the appointment of officials is solely at the discretion of the central government, with no intervention from any other institution. Section 5(1) specifies that the central government may nominate to the regional offices anyone who, in its opinion, is qualified to appraise the effect of films on the public. Most of the time, the courts overrule CBFC members' bans on movies, citing them as backward. Whether it's Uda Punjab or Vishwaroopam, the pattern is apparent.

This demonstrates a lack of grasp of the court's doctrines and precedents.

Courts based on the same basis later lift the ban, which has been common practise.

The Cinematograph (Amendment) Bill, 2018

This measure was introduced in parliament by Shashi Tharoor. The law was proposed as a remedy to the censorship board's and the central government's inappropriate directives and involvement. The bill seeks to eradicate all forms of central government involvement in movie censorship. The bill also asks to remove the term censorship and replace it with the term certifying body because no one has the right to interfere with a person's artistic freedom, but in order to warn the audience about the contents of the movie, the certifying body can only give different certificates to the movie. According to the bill, the censorship board will not have the authority to ban or direct changes to a film unless it completely adheres to the constraints outlined in article 19. (2). The bill also discusses standards for how each film should be certified, and it repeals all provisions from the original legislation that deal with censorship and the involvement of the federal government. To a greater extent, the law addresses the issues of ambiguity and political influence in censorship boards. The absence of central government engagement would violate a variety of politically motivated moves.

⁴ <https://www.cbfcindia.gov.in/main/guidelines.html>

CONCLUSION

A free society's eyes and ears are artists, writers, playwrights, and filmmakers. They are the true lungs of a free society because the intensity of their medium provides a much-needed break from the monotony of everyday life. Their right to express themselves in a manner based on their personal preferences is a fundamental right, just like everyone else's freedom of speech and expression. Our democratic government, which is based on the Indian constitution, guarantees the right of free speech and expression to every citizen of the country, which includes artistic freedom of film makers, and that privilege is not restricted on the outflow of perspectives that may be appealing to standard idea. Difference is at the heart of democratic governance. As a result, individuals who express views that are critical of winning social reality are respected place in the constitutional hierarchy. History demonstrates that there is a difference in varied degrees. Background contributes to societal evolution. Individuals who ask unanswered questions suspicions contribute to the alteration of social norms. A democratic government has been constituted in recognition of their tenacity. Any attempt by the state to stifle free expression expression of feelings and opinions should be avoided in the future.

